

APPEAL NO. 033072
FILED JANUARY 6, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 12, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the ninth quarter. The claimant appealed, arguing that the hearing officer's SIBs determination is against the great weight and preponderance of the evidence. The respondent (self-insured) responded, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criteria in issue in this case are whether the claimant's unemployment during the qualifying period was a direct result of his impairment and whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(2) and 130.102(d)(5). The qualifying period for the ninth quarter of SIBs was from April 19 through July 18, 2003. The claimant based his request for entitlement to SIBs for the ninth quarter on the assertion that he was enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) and that he made a good faith effort to look for employment commensurate with his ability to work every week of the qualifying period. The hearing officer's direct result determination was not appealed.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. Rule 130.101(8) defines the phrase "full time vocational rehabilitation program." Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer noted that the claimant is a TRC client and that he attends computer classes as part of the Independent Living Services program, however, the program is not intended to return the claimant to the workforce. The hearing officer also noted that there was no Individualized Plan for Employment to show that there was an employment goal.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment.

Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Although the claimant lists job contacts for every week of the qualifying period, the hearing officer noted that the claimant's job search efforts seemed focused to qualify for SIBs, not to find a job.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer determines what facts the evidence has established. Our review of the record reveals that the hearing officer's determination that the claimant did not satisfy the good faith requirement under Rule 130.102(d)(2) and Rule 130.102(d)(5) is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse the determination that the claimant is not entitled to SIBs for the ninth quarter on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge